Remarks

Claims 25 and 45 have been amended to reinsert the word "hypothetical". Support for the Amendment may be found in the specification in amended paragraph of page 14, lines 1-14.

Claims 25-29 and 42-45 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0169675 (Helot et al.) "Helot" in view of U.S. Patent No. 6,725,257 (Cansler et al.) "Cansler". This rejection is respectfully traversed. Helot at paragraph 0006 describes "a system and method for ordering consumer items (such as products and services) in electronic commerce. The present invention provides a simple and intuitive user interface that presents to the consumer a real-time true representation of what is being ordered." Accordingly, Helot "consumer items" are indeed not hypothetical, and moreover are clearly available for purchase. Moreover, Helot describes a checkout, payment screen, credit card, shipping screen, etc. at paragraph 0050, which clearly describes the opposite to the claimed invention, and thus teaches away from its consumer items being hypothetical and not available for purchase. Further, paragraph 0066 clearly states that "the representation window provides the consumer with a real-time depiction of what is actually being ordered." (underline added).

Cansler's configured vehicle can be ordered as apparent from steps 34 and 36 of its FIG. 1, and thus the configured vehicle is not hypothetical. Cansler describes an "ordering system" that "transmits the vehicle information, along with any information gathered from the user, to dealers, vehicle brokers, or manufacturers so that they may obtain a price quote" (Cansler column 4, lines 60-64). The ability of Cansler to be linked to an ordering system is a clear indication that Cansler software facilitates purchasing of a non-hypothetical product. See also Claim 21 of Cansler.

The fact that Cansler describes at column 4, lines 64-67, that "[i]f the configuration process is not coupled with an on-line ordering system, then the user proceeds from step 34 to step 27, where the user decides whether to configure another vehicle", does not negate the fact that Cansler's configuration process deals with a real non-hypothetical vehicle that would be orderable on-line if the on-line ordering were

available. One could state that the configured vehicle is still an orderable product just not via its on-line system. As Cansler states at column 3, lines 41-44, the "embodiment of the inventive apparatus and process provides a computationally efficient means by which a user can configure an orderable vehicle over a network". Moreover to state that a vehicle configured is not a hypothetical product would be antithetical to the express teachings of Cansler. Otherwise, why would Cansler later on in the same column 3, lines 58-65, state that "[t]o configure the vehicle, the user selects the set of optional attributes they want--in this case, leather seats, CD player and alloy wheels--and either adds them to the set of standard attributes or substitutes them for some of the standard attributes to arrive at an orderable vehicle" (underline added). Such configuration would occur at step 32 of FIG. 1, even before arrival at step 34 of FIG. 1 asking whether the "user wants to buy the vehicle?" so configured.

Under the test for obviousness as being what the combined teachings of the references would have suggested to those of ordinary skill in the art. Clearly, given that Cansler and Helot are limited to real non-hypothetical products, their combined teaching would not suggest to one skilled to provide the claimed hypothetical product configuration, or suggest any features selectable for such hypothetical product configuration. In fact, as such references are limited to real non-hypothetical and orderable products, they actually teach away from the claimed invention. Accordingly, Claims 25 and 42 and their respective dependent claims are patentable over the combination of Helot and Cansler.

It is the Examiner's position at item 5 of the Action that Helot at paragraph 0041 describes the step of measuring elapse time to configure the product of Claims 27 and 44. Helot paragraph 0041 states that "[f]or example, the statistical data may provide insight into a consumer's state of mind by recording how long users hovered over particular options". Claims 27 and 44 describe measuring elapse time for each user of the computer systems to configure the product. Even if the computers in Helot were not really purchasable, merely recording "how long users hovered over particular options" is not comparable to determining any data as to how long it took a Helot user to complete the entire process of configuring one of its computers. As Cansler does not provide that of

Claims 27 and 44 absent in Helot, Claims 27 and 44 are patentable over the combination of Helot and Cansler.
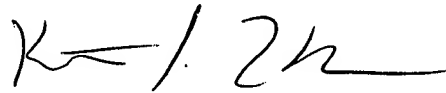
It is the Examiner's position at item 6 of the Action that Helot at paragraph 0041 describes data representing selected features and any changes in the selection of features until product configuration is completed of Claims 28 and 45. Nowhere at paragraph 0041 of Helot is its statistical data described as having any changes in selection of features until product configuration is complete. Even if the computers in Helot were not really purchasable, merely stating that "the statistical data may provide insight into a consumer's state of mind by recording ...how many consumers change began but did not complete the ordering process" does not describe or suggest Claims 28 or 45. It appears that Helot is interested in those consumers who did not complete the ordering process, while Claims 28 and 45 describe that the "product configuration is completed" with respect to the data representing selected features and any changes. Since Cansler does not provide that of Claims 28 and 45 absent in Helot, Claims 28 and 45 are patentable over the combination of Helot and Cansler.

For the above reasons, withdrawal of the rejection of Claims 25-29 and 42-45 is respectfully requested such that the application can proceed to allowance.

Respectfully submitted,

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